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Amdt. dated 01/03/2005
Reply to OA mailed 08/03/2004

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REMARKS

This Amendment is responsive to the Office Action identified above, and is further responsive in any other manner indicated below.

PENDING CLAIMS

Claims 17 and 18 were pending in the application, under consideration and subject to examination at the time of the Office Action. Unrelated to any prior art, scope or rejection, claims have been amended and/or added to adjust a clarity and/or focus of Applicant's claimed invention. That is, the amendments to the claims are unrelated to any prior art or scope adjustment, and are simply clarified claims in which Applicant is presently interested. At entry of this paper, Claims 17-26 are now pending in the application for consideration and examination.

DOUBLE PATENTING REJECTION - TRAVERSED/NOT SUPPORTED

The non-statutory double patenting rejection is respectfully traversed because such rejection does not provide the factual analysis required for such rejections under U.S. patent law, *i.e.*, the Examiner has not satisfied his/her initial burden to adequately support the rejection. More particularly, MPEP §804 states in relevant *verbatim*:

Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 USC 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 US 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 USC 103, are employed when making an obviousness-type double patenting analysis. These factual inquiries are summarized as follows:

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- (A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of non-obviousness.

Any obviousness-type double patenting rejection should make clear:

- (A) The differences between the invention defined by the conflicting claims - a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent.

The rejection made at Item 2 on page 2 of the Action merely makes the general and vague allegation that all of the limitations in Claims 17 and 18 are recited in Claim 16 of US 6,738,131 B2, and then further alleges that that each of two (2) limitations in the present claims are met by two (2) other recitations in Claim 16 of US 6,738,131 B2. Such mere opinion is not sufficient in light of the analysis required under §103 to provide minimum support for a double patenting rejection. Further, the rejection does not make clear any differences, or any reason at all why a person of ordinary skill in the art would conclude that the invention defined in the claims at issue is an obvious variation of the invention defined in a claim in the patent. Accordingly, Applicant respectfully submits that the above analysis should be provided in order for the Examiner to satisfy his/her initial burden to support the rejection, or the rejection should be withdrawn.

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NON-STATUTORY DOUBLE PAT. REJ. - TERMINAL DISCLAIMER FILED

Despite the above traversal, in order to travel a path of least resistance to obtaining a patent for the present application, submitted herewith is an executed Terminal Disclaimer to overcome the non-statutory double patenting rejection. As a result of the foregoing and the attached, reconsideration and withdrawal of the double patenting rejection of the subject claims are respectfully requested. The above statements, and/or the filing of any Terminal Disclaimer, are not and should not be taken as any indication or admission that the rejection is valid, but is merely use of a procedural approach to obtain a patent (without prejudice or disclaimer) as quickly as possible given that the present application's patent may have coextensive term as measured from the same original filing date, regardless of the Terminal Disclaimer. Accordingly, further discussions/arguments concerning such rejection(s), claims and/or reference are left for the future if/when appropriate.

REJECTION UNDER 35 USC §102 - TRAVERSED

The 35 USC §102 rejection of Claims 17 and 18 as being anticipated by Hiura *et al.*, "Depth Measurement by the Multi-Focus Camera" is respectfully traversed. Such rejection is rendered obsolete by the present clarifying amendments to Applicant's claims, and accordingly, traversal arguments are not appropriate at this time. However, Applicant respectfully submits the following to preclude renewal of any such rejection against Applicant's clarified claims.

All descriptions of Applicants disclosed and claimed invention, and all descriptions and rebuttal arguments regarding the applied prior art, as previously

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submitted by Applicant in any form, are repeated and incorporated herein by reference. Further, all Office Action statements regarding the prior art rejections are respectfully traversed.

To support a rejection under 35 USC §102 (*In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999)) requires that each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference. Moreover, inherency may not be established by probabilities or possibilities, or that a thing may result from merely from given circumstances. Accordingly, the applied art does not support a §102 anticipation-type rejection because it does not, at minimum, disclose (or suggest) the following limitations of Applicant's clarified claims.

Applicant's disclosed and claimed distance measuring arrangements measure distance using a plurality of differing image-taking operations effected with a plurality of light masking members which each have different light passing openings. For example, Applicant's arrangement may include 2-3 different masks and perform an image-taking operation with respect to each mask to image an object, and then use information (e.g., amount of displacement) from the obtained images to calculate a distance to the object. An important aspect of Applicant's disclosed and claimed invention is that the image-taking operations do not occur simultaneously, thereby simplifying construction and calculations of Applicant's arrangements. In terms of distinguishing claim language, independent Claims 17 and 18, for example, recite that "light passing openings" are "arranged in turn between the object and the lens." Claims 21 and 25 recite that "the light passing openings are arranged at differing timings between the object and the lens." As well, Claims 22 and 26 recite that

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"the light passing openings are arranged sequentially between the object and the lens."

Regarding the applied art, Hiura *et al.* does not disclose or suggest Applicant's invention, given that Hiura *et al.* is specifically directed to a "multi-focus camera" which captures multiple images with differing focus values simultaneously. More particularly, FIG. 1 of Hiura *et al.*, for example, illustrates a multi-focus camera. Further, the disclosure of Hiura *et al.* specifically teaches using simultaneous multi-focus images for depth measurement.

In addition to the foregoing, the following additional remarks from Applicant's foreign representative also are submitted in support of traversal of the rejection and patentability of Applicant's claims.

Claim 17 recites the feature that the plurality of light masking members are capable of being arranged in turn between the object and the lens. Claim 18 also defines a feature similar to the above feature of Claim 17. According to the claimed invention, therefore, the light is in turn passed through the openings of the light masking members.

On the other hand, the cited reference discloses a camera in which measurement is performed with all the light passing apertures opened. Namely; all the light passing apertures remain open during measurement. This indicates that the light beams passed through the light passing apertures are detected at the same time during measurement, as distinct from the claimed invention discussed above.

According to the cited reference, therefore, because the light receiving portion tends to generate noises, the plurality of light beams are difficult to separate. In

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contrast thereto, in the claimed invention, the light is passed through the plurality of the light passing openings in turn and not at the same time. Therefore, because the light receiving portion does not generate as much noise, it is possible to stably measure a distance to the object with a high accuracy as compared with the cited reference.

As a result of all of the foregoing, it is respectfully submitted that the applied art would not support a §102 anticipation-type rejection. Accordingly, reconsideration and withdrawal of such §102 rejection, and express written allowance of all of the rejected claims, are respectfully requested.

RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer of any scope or subject matter. Further, Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

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EXAMINER INVITED TO TELEPHONE

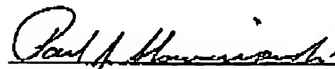
The Examiner is invited to telephone the undersigned at the local D.C. area number 703-312-6600, to discuss an Examiner's Amendment or other suggested action for accelerating prosecution and moving the present application to allowance.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are in condition for allowance. Accordingly, early allowance of such claims is respectfully requested.

A Petition for Extension of Time and Form PTO-2038 accompanies this Amendment and Terminal Disclaimer. To whatever other extent is actually necessary, Applicant respectfully petitions the Commissioner for an extension of time under 37 CFR §1.136. Please charge any actual and appropriate deficiency in the required fee to ATS&K Deposit Account No. 01-2135 (as Case No. 503.41763CX1).

Respectfully submitted,



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Attachments:

Terminal Disclaimer
Petition for Extension of Time
PTO-2038 (Fee Codes 1252/1814)